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**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 28th day of January, 2000

Served: January 28, 2000

Application of

**ATLANTIC COAST JET, INC.**

for a certificate of public convenience and necessity under  
49 U.S.C. 41102 to engage in interstate scheduled air  
transportation of persons, property and mail

Docket OST-99-6249 - 9

**ORDER TO SHOW CAUSE  
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

**Summary**

By this order, we tentatively find that Atlantic Coast Jet, Inc. ("ACJet"), is a citizen of the United States and is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail and should be issued a certificate of public convenience and necessity for such operations.

**Background**

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are "fit, willing, and able" to perform such transportation, and to comply with the Statute and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress's concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and

(3) will comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On September 22, 1999, a newly formed company, ACJet, headquartered in Dulles, Virginia, filed an application in Docket OST-99-6249 for a certificate to provide interstate scheduled air transportation of persons, property, and mail pursuant to section 41102 of the Statute. ACJet accompanied its application with the fitness information required by section 204.3 of our regulations.<sup>1</sup> If its application is approved, ACJet intends to operate regional jet scheduled flights exclusively under the trade name "the Delta Connection" to various U.S. points, primarily in the Northeast, pursuant to a code-sharing agreement with Delta Air Lines ("Delta").<sup>2</sup>

No answers have been received to ACJet's application. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that ACJet is a U.S. citizen and is fit, willing, and able to operate its proposed interstate scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

### **The Company**

ACJet was incorporated as ACA Management, Inc., in Delaware on December 14, 1998, by its parent, Atlantic Coast Airlines Holdings, Inc. ("AC Holdings"), a publicly traded company. The only holder of a substantial interest (10 percent or more) in AC Holdings is Mr. Gordon A. Cain (11.4 percent), who was its first Chairman.<sup>3</sup>

AC Holdings also wholly owns Atlantic Coast Airlines ("ACA"), which was certificated by the Department in 1991 (Order 91-12-43). ACA now operates scheduled passenger service to approximately 51 cities with a fleet of 80 regional jet and turboprop aircraft from its principal hubs at Washington Dulles International Airport and Chicago O'Hare Airport under a code-sharing agreement with United Air Lines using the trade name United Express.

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<sup>1</sup> The applicant asked for confidential treatment of Exhibit 15 to its application, which contains the details of its financial projections and of terms of its code-share agreement with Delta Air Lines. On October 13, we forwarded requests to the applicant for additional and clarifying information. One of these letters was filed in the public docket, and the other, which concerned the information for which ACJet requested confidentiality, was withheld from public disclosure pending a ruling on the applicant's motion. The applicant filed the requested supplemental information on November 1, 1999, in two letters, one of which was filed in the public docket, and the other, covering the sensitive information, was again withheld pending a ruling. By staff action in a letter dated November 9, 1999, the Department granted the applicant's request for confidential treatment of all of the material contained in the two filings.

<sup>2</sup> The applicant also seeks to register its use of the trade name "the Delta Connection."

<sup>3</sup> Mr. Cain, who has a background in merchant banking and in the petrochemical industry, holds a 44-percent interest in Air Assets, Inc., parent of Martinaire, Inc., an air taxi operator located in Texas. He also owns 18.2 percent of the Class A ordinary stock of BWIA International Airways, Ltd., a foreign air carrier operating out of Trinidad.

## Managerial Competence

ACJet will have an independent General Manager with total authority with respect to ACJet's compliance and safety. The General Manager will report to the President/Chief Operating Officer of ACJet, who holds the same positions with AC Holdings and ACA.<sup>4</sup> In addition, ACJet will have its own key technical managers (*i.e.*, Directors of Operations, Maintenance, and Safety, Chief Inspector, and Chief Pilot) reporting to the General Manager. The AC companies will share a single senior management team and board of directors.<sup>5</sup>

Heading the applicant's management team is Mr. Kerry B. Skeen, Chief Executive Officer of the AC companies, who assumed the position of Chairman of the Board in January 2000. Mr. Skeen has over 20 years of experience in airline management, including nine years in marketing and reservations at Delta and four years with the former certificated carrier WestAir Commuter Airlines, a United Express carrier based at Fresno, California. He was named Senior Vice President of WestAir in 1989 and served as President of that carrier's Atlantic Coast Division for the two years prior to its spin-off and certification as ACA in 1991. Mr. Skeen was Executive Vice President and Chief Operating Officer of the AC companies until being named President in 1992 and Chief Executive Officer in 1995.

Mr. Thomas J. Moore undertook the duties of President and Chief Operating Officer of the AC companies in January 2000, having previously served as their Executive Vice President and Chief Operating Officer. He came to Atlantic Coast as Senior Vice President of Maintenance and Operations in 1994 from Continental Airlines, where he worked for ten years in positions ranging from Manager of Financial Planning to Staff Vice President for Component Production and Vendor Administration.

Mr. Kenneth R. Latour, who has been with Atlantic Coast since 1992 as its Vice President of Flight Operations, was named ACJet's General Manager in January 2000. He had previously worked as Vice President of Flight Operations for Precision Airlines, a commuter carrier in

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<sup>4</sup> With respect to matters applicable to all three Atlantic Coast entities (AC Holdings, ACA, and ACJet), we will refer to them inclusively as "the AC companies" or "Atlantic Coast."

<sup>5</sup> The Directors of the AC companies are Mr. Kerry B. Skeen (Chairman), Chief Executive Officer of the AC companies; Mr. Thomas J. Moore, President and Chief Operating Officer of the AC companies; Mr. C. Edward Acker (former Chairman), Chairman of The Acker Group, a consulting and investment banking firm in New York, and Chairman and President of Martinaire; Mr. Robert E. Buchanan, President of Buchanan Companies, LLC, a Washington, DC-area builder/developer of commercial and residential properties; Ms. Susan M. Coughlin, Director and Chief Operating Officer of the ATA Foundation and Principal of Air Safety Management Associates; Mr. James J. Kerley, non-Executive Chairman of DT Industries, Inc., in Springfield, Missouri; Mr. James C. Miller III, Distinguished Fellow, Center for Study of Public Choice at George Mason University, Fairfax, Virginia; and Mr. John M. Sullivan, President of Beta Consulting, Inc., an investment and management consulting company in Houston, Texas.

Manchester, New Hampshire; and as Regional Flight Manager at WestAir in Fresno. Mr. Latour holds an FAA-issued Airline Transport Pilot Certificate.

Mr. David Cox has been selected to serve as ACJet's Director of Operations. He was hired by ACA in 1991 as a pilot; was promoted to Regional Flight Manager/Assistant Chief Pilot in 1995, to Fleet Manager of the Jetstream 4100 aircraft in 1996, and to Fleet Manager of the CRJ aircraft in 1997. He holds an FAA Airline Transport Pilot Certificate.

Mr. John W. Badger will be the applicant's Chief Pilot, reporting through the Director of Operations to the General Manager. During the past nine years, Mr. Badger has worked as a flight instructor for Comair Aviation Academy in Sanford, Florida; as owner/operator of Badger Air Services, a flight school and air taxi operator in Seattle; and as a pilot with ACA. He has been issued an Airline Transport Pilot Certificate by the FAA and has accumulated over 5,500 hours of flight time.

Mr. Arlen R. Jones has been named Director of Maintenance for ACJet. His 25-year career in aviation includes positions as aviation mechanic with Southeastern Commuter Airlines, Manager of Base Maintenance with Atlantic Southeast Airlines, and Technical Representative with Embraer Aircraft Corporation. He is a licensed pilot and holds an Airframe and Powerplant Mechanic Certificate issued by the FAA.

Mr. David S. Burton, who has been ACA's Director of Quality Assurance/Chief Inspector since April 1999, was selected to be the applicant's Chief Inspector, reporting to the General Manager. For the previous nine years, Mr. Burton was Director of Quality Control/Chief Inspector for World Airways. He has also held similar senior quality assurance positions with Eastern Air Lines and Braniff International Airways. Mr. Burton holds an FAA-issued Airframe and Powerplant Mechanic Certificate.

Mr. Stephen F. Tremel will be ACJet's Director of Safety, responsible to the General Manager, but also with direct-line reporting authority to the President. He has worked as a pilot for ACA since October 1998, prior to which time he was employed as Executive Assistant to the Chief Executive of the Corporation for National Service. For 24 years, Mr. Tremel served in the U.S. Marine Corps, ending as a Lieutenant Colonel. Twelve years of his military service were spent in operational flight assignments. He was both an Aviation and Ground Safety Officer, Squadron Operations Officer, and Marine Air Group Executive Officer, with responsibilities for ground and flight safety, hazardous materials, training, scheduling, aircrew management, and maintenance coordination. He is licensed by the FAA as a Commercial Pilot and a Flight and Ground Instructor.

In view of the experience and background of the applicant's key personnel,<sup>6</sup> we tentatively conclude that ACJet has demonstrated that it has both senior management and key technical supervisors who have the managerial skills and technical ability to conduct its proposed service.<sup>7</sup>

## **Financial Plan and Operating Proposal**

If granted the certificate authority it seeks, ACJet intends to provide scheduled passenger service with regional jet aircraft exclusively under a Delta Connection code-sharing agreement. The applicant states that, although its route schedule will be designed primarily by Delta, it expects the flights to be concentrated principally in the Northeast.

ACJet's initial base of operations will be located at the Atlantic Coast facilities at Dulles, Virginia. The applicant has entered into an agreement with ACA for the provision of certain facilities, materials, training, maintenance, financial, and administrative services. All airline operational and maintenance services are to be provided by ACA under the exclusive direction of ACJet. Furthermore, the agreement allows ACJet to amend or terminate the services agreement at any time if it finds the services provided unsatisfactory. The applicant notes that it will have a close working relationship with ACA, which will enable it to benefit from ACA's expertise in operating a regional airline; however, ACJet will have its own pilots and other employees, and will be in operational control of its business.

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<sup>6</sup> In addition to those discussed above, ACJet will have the benefit of the experience and managerial skills of other Atlantic Coast senior management who report to Mr. Moore or Mr. Skeen:

Mr. John W. Cross, Vice President of Technical Services, joined WestAir's Atlantic Coast Division in 1990 as Base Maintenance Manager at Wilkes-Barre, Pennsylvania. In 1991, he was named Director of Technical Services at Atlantic Coast, and in 1997, was promoted to his current position.

Mr. Michael S. Davis, Senior Vice President-Customer Service, previously worked for Business Express Airlines in the same capacity.

Mr. Richard J. Surratt joined Atlantic Coast in December 1999 as Senior Vice President and Chief Financial Officer. He had previously worked for nine years for Mobil Corporation, most recently as Director of its mergers and acquisitions group, and previously as Treasurer-Latin America.

Ms. Angie M. Shermer, Vice President of Sales, formerly held increasingly responsible customer service and sales positions with WestAir.

Mr. Eric I. Nordling, Vice President-Market Planning, gained eleven years of experience in market research and revenue management with United, MarkAir, and Delta.

Mr. Richard J. Kennedy, Vice President, General Counsel and Secretary, formerly was employed as Account Director-Asset Management with British Aerospace Holdings in Herndon, Virginia.

Mr. David W. Asai, Vice President-Financial Planning and Controller, recently joined Atlantic Coast after having worked as Vice President and Controller for Reno Air and as Chief Financial Officer of Spirit Airlines.

<sup>7</sup> Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

According to the code-sharing agreement, ACJet is required to operate and maintain 45 aircraft for the Delta Connection service. Delta will purchase all of ACJet's available seat-miles, plan and market the flights, and collect all associated revenue. Delta will pay ACJet an agreed-upon rate per block hour flown, which rate is independent of the number of passengers carried by ACJet. The agreement provides that Delta will pay to ACJet, weekly in advance, funds equal to approximately one week's estimated operating costs, plus incentive payments if the applicant meets certain performance goals. In addition to ACJet's direct operating costs, Delta will also be responsible for such other items as ground handling, advertising, reservations, sales, ticketing, refunds, and revenue accounting associated with the Delta Connection flights. ACJet contends that, since its operating costs are being prepaid by Delta, there will be little risk to passenger funds.

According to the proposed aircraft delivery schedule, ACJet will institute operations in April 2000 with two new 32-seat Dornier 328JET-300s and increase its fleet by one to three 328JETs (and Canadair Regional Jets ("CRJ")) per month throughout the first year. By the end of its first year of scheduled operations, ACJet expects to have flown approximately 37,555 block hours with a 20-aircraft fleet consisting of 16 328JETs and four CRJs. Over the next two years, nine more 328JETs and 16 more CRJs will be added, resulting in a total of 45 aircraft. The applicant states that these aircraft have been on order by ACA, which intends to assign its rights under the purchase agreements to ACJet.<sup>8</sup> Acquisition financing is being arranged with the support of ACA and the aircraft manufacturers. In addition, AC Holdings and ACA will make resources available to cover ACJet's estimated \$2.9 million in pre-operating expenses (e.g., for certification, salaries, training, and legal fees), and initial working capital.

Under a request for confidential treatment, ACJet filed operational and financial projections for itself covering a six-month pre-operating period (October 1999-March 2000) and the first year of certificated operations beginning April 2000. Estimated unit and summary operating cost data were provided as well as projected operating statistics, including block hours, departures, enplanements, load factors, and operating cost per available seat-mile. These documents also include the major assumptions upon which the projections were based, particularly the terms of the code-sharing agreement with Delta. The applicant also filed for AC Holdings and its subsidiaries a pro forma consolidated balance sheet and cash flow statement which reflect the AC companies' expected financial condition at the end of each of the six quarters beginning with the fourth quarter of 1999. We have examined the applicant's projections and find them to be reasonable.

In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital

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<sup>8</sup> ACJet notes that ACA currently operates 20 CRJs and has 43 more on order. Of these 43, 20 will be operated by ACJet. In addition, ACA has conditionally committed to purchase 55 Dornier 328JET and 428JET aircraft and has unconditionally agreed to acquire another 25 328JETs for use by ACJet. The applicant's aircraft delivery schedule projects delivery of the 25 328JETs over 21 months beginning in March 2000, and delivery of the 20 CRJs over 28 months beginning in September 2000.

reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

The applicant states that AC Holdings and ACA have the financial capacity, creditworthiness, and the willingness to support ACJet's start-up. As evidence of the financial ability of its affiliates to honor their commitments, ACJet filed copies of AC Holdings' SEC Form 10-Q for the second quarter of 1999, its Form 10-Ks for calendar years 1996, 1997, and 1998, and its annual report to stockholders for 1998. As of June 30, 1999, AC Holdings had current assets of \$100.19 million (including \$44.61 million in cash and cash equivalents), current liabilities of \$45.02 million (yielding a working capital balance of \$55.17 million and a current ratio of 2.23 to 1), long-term debt of \$75.94 million, and stockholders' equity of \$111.97 million (including retained earnings of \$55.76 million). For the six months ended June 30, AC Holdings reported operating income of \$24.17 million and net income of \$13.94 million. In addition, ACA has available approximately \$32 million of a \$35 million line-of-credit.

Based on our analysis of its forecasts, the "prepay" and other provisions of the Delta Connection code-sharing agreement, and the ability and intent of AC Holdings and ACA to support the applicant's start-up, we tentatively conclude that ACJet appears to have access to resources sufficient to meet our financial fitness criteria, not only for its proposed start-up with two aircraft, but also to cover an expansion to up to 20 aircraft, without posing an undue risk to consumers or their funds.

Although this number of aircraft is larger than we would normally authorize a start-up carrier to operate, we tentatively conclude that, with the support of ACA and Delta, the applicant will be able economically and safely to undertake an operation of this size. However, because the support of ACA, AC Holdings and Delta are essential to ACJet's viability, we propose to condition any certificate authority issued to the applicant on its continued existence as a wholly owned subsidiary of AC Holdings and on its operation under the terms of the code-sharing agreement with Delta.

### **Compliance Disposition**

ACJet states that neither it, ACA, AC Holdings, any person having a substantial in AC Holdings, nor any of ACJet's key personnel have been charged with any unfair or deceptive or anticompetitive business practice, or with any fraud, felony or antitrust violation. The applicant further states that ACA has not been the subject of any formal complaints brought by the Department.

ACJet declares that there are no actions or judgments against itself or against any of its key personnel, and that there are no judgments against the AC companies or their key personnel. The applicant described various actions pending against ACA that it stated were typical of the actions

brought against air carriers.<sup>9</sup> ACJet also described litigation filed in Washington, DC, by AC Holdings' former Chairman and current Director, Mr. C. Edward Acker, against the Royal Merchant Bank and Finance Co., Ltd., asking the court to declare unenforceable an agreement between the parties. The Bank subsequently countersued in the Republic of Trinidad and Tobago seeking to have the terms of the agreement enforced.

ACJet reports that ACA is the subject of 17 unresolved FAA enforcement cases, of which 13 allege violations of various security regulations. The applicant notes that a compromise civil penalty of \$1,500 is being considered by the FAA in one of these cases. The four remaining actions allege violations of rules on employee drug testing, aircraft maintenance, and hazardous materials requirements. The carrier acknowledged that potential civil penalties totaling \$88,000 have been proposed in these cases. ACA states that it has provided responses to each of the FAA's concerns and in some cases has requested informal conferences with FAA flight standards officials to discuss the allegations. The applicant further claims that ACA has not been involved in any accidents or incidents that occurred within the past year or that are still under investigation.

We reviewed the FAA's records with respect to ACA's compliance and safety history. These records indicate that the carrier is presently the subject of 12 open FAA enforcement cases in which civil penalties are under consideration. Eight of these cases involve alleged lapses in passenger security rules, and the remaining four are the same non-security actions reported by the applicant. FAA records also reflect seven incidents involving ACA flights during the past year. One of these incidents was ascribed to a lightning strike, one involved a skid off a slick runway as the result of alleged improper braking by the pilot, and the other five were attributed to various aircraft system malfunctions. No injuries were reported, and no FAA enforcement actions were taken in any of these instances.

The FAA states, that although it will be some time before the open enforcement cases are settled, all of the problems that gave rise to these actions have been resolved to the FAA's satisfaction. Further, the FAA states that ACA's recent operations have been satisfactory with respect to compliance and safety. The FAA also confirms that ACJet has applied for certification under Part 119 of the Federal Aviation Regulations, that the certification work is underway, and that all key technical personnel have been found qualified by the FAA to hold their respective positions. It is our experience that ACA's FAA compliance, enforcement, and incident record is not unusual in comparison to that of other carriers of its size.

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<sup>9</sup> Claims have been made against ACA by passengers and others complaining of such matters as injury, damage or delay in the delivery of baggage, all of which are to be addressed by the carrier's liability insurance company. Three actions were initiated by employees or former employees charging discrimination on the basis of age or disability, defamation based on dismissal for alleged involvement in unsafe flight operations, and harassment/discrimination and constructive discharge. Also, two complaints about the carrier are before the Equal Employment Opportunity Commission, alleging discrimination on the basis of race and sex in one instance, and disability in the other instance. ACA is also a party to several grievance proceedings under its collective bargaining agreements with its pilot and flight attendant unions, which disputes are being arbitrated.



In light of these circumstances, we tentatively conclude that ACJet will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

### **CITIZENSHIP**

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

ACJet is a corporation organized under the laws of the State of Delaware. It is wholly owned by AC Holdings, a publicly traded company at least 75 percent of whose voting stock is held by U.S. citizens. The only person owning a substantial interest (10 percent or more) in AC Holdings is Mr. Gordon Cain, a U.S. citizen. The applicant has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens.<sup>10</sup> It has also affirmed that the members of its board of directors and all of its senior management are citizens of the United States. Finally, we have found nothing in the record to suggest that control of ACJet rests with non-U.S. citizens.

Based on the above, we tentatively conclude that ACJet is a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations proposed in its application.

### **OBJECTIONS**

We will give interested persons 14 calendar days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses.<sup>11</sup> We will not entertain general, vague, or unsupported objections.

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<sup>10</sup> The applicant provided an opinion by AC Holdings' Chief Financial Officer that, based on his knowledge of the identity of the holders of AC Holdings' stock, at least 75 percent of the voting interest is owned and controlled by U.S. citizens.

<sup>11</sup> If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to ACJet's fitness and certification, and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

### **CERTIFICATE CONDITIONS AND LIMITATIONS**

If ACJet is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that ACJet has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of Part 205 of our rules, and a statement of changes it may have undergone since its fitness was examined.

Furthermore, we remind ACJet of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Our tentative findings stated above are based on a first-year operating plan wherein ACJet would utilize up to 20 regional jet aircraft. These findings might no longer apply if the company were to substantially change the scope or nature of its operations through the introduction of additional aircraft. Therefore, once the applicant's certificate becomes effective, should ACJet propose to acquire and operate more than 20 such aircraft, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with any additional aircraft.

Moreover, because the supporting roles of ACA, AC Holdings and Delta are critical to ACJet's viability, we intend to condition the effectiveness of the applicant's certificate authority on its continued existence as a wholly owned subsidiary of AC Holdings and on its operation under the provisions of the code-sharing agreement with Delta. Should AC Holdings propose to sell its ACJet subsidiary or should ACJet and Delta seek to terminate their Delta Connection code-sharing agreement, the applicant must file a request to amend the terms of its certificate.

If ACJet should propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>12</sup> The compliance of the

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<sup>12</sup> By notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. ACJet may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).<sup>13</sup>

To aid the Department in its responsibility to monitor the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,<sup>14</sup> and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

#### **ACCORDINGLY,**

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Atlantic Coast Jet, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-99-6249, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.<sup>15</sup>
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.

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<sup>13</sup> We also remind ACJet about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

<sup>14</sup> These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

<sup>15</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

**A. BRADLEY MIMS**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

## SPECIMEN

*Attachment*



### *Terms, Conditions, and Limitations*

#### ATLANTIC COAST JET, INC.

*is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.*

*This authority is subject to the following provisions:*

*(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided however, that the Department may stay the effectiveness of this authority at any time prior to that date:*

*(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).*

*(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.*

*(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.*

*(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."*

*(3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*

*(4) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.*

(5) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*

(6) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*

(7) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*

(a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*

(b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*

(8) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.*

(9) *In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.*

(10) *The effectiveness of the authority contained in this certificate is conditioned upon the holder's continuing existence as a wholly owned subsidiary of Atlantic Coast Airlines Holdings, Inc., and its operation under the terms of the Delta Connection code-sharing agreement with Delta Air Lines, Inc.*

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